

House Study Bill 192 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON VANDER LINDEN)

A BILL FOR

- 1 An Act relating to the rulemaking process and state agency
- 2 decision making.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 17A.4, subsection 3, Code 2013, is
2 amended to read as follows:

3 3. a. ~~When an agency for good cause finds that notice and~~
4 ~~public participation would be unnecessary, impracticable, or~~
5 ~~contrary to the public interest~~ When the statute so provides,
6 or with the approval of the administrative rules review
7 committee, if the committee finds good cause that notice and
8 public participation would be unnecessary, impracticable, or
9 contrary to the public interest, the provisions of subsection 1
10 shall be inapplicable. ~~The agency shall incorporate in each~~
11 ~~rule issued in reliance upon this provision either the finding~~
12 ~~and a brief statement of the reasons for the finding, or a~~
13 ~~statement that the rule is within a very narrowly tailored~~
14 ~~category of rules whose issuance has previously been exempted~~
15 ~~from subsection 1 by a special rule relying on this provision~~
16 ~~and including such a finding and statement of reasons for the~~
17 ~~entire category.~~

18 b. (1) If the administrative rules review committee by
19 a two-thirds vote, the governor, or the attorney general
20 files with the administrative code editor an objection to the
21 adoption of any a rule or portion of a rule pursuant to this
22 subsection, ~~that~~ the rule or portion of the rule shall cease
23 to be effective one hundred eighty days after the date the
24 objection was filed. A

25 (2) If the administrative rules review committee files with
26 the administrative code editor an objection to the adoption of
27 a rule or portion of a rule pursuant to this subsection, the
28 administrative rules review committee, by a separate two-thirds
29 vote, may suspend the applicability of the rule or portion
30 of the rule until the rule ceases to be effective under this
31 paragraph "b". The determination to suspend the applicability
32 of the rule or portion of the rule shall be included in the copy
33 of the objection to be forwarded to the agency.

34 c. If an objection to a rule is filed under this subsection,
35 a copy of the objection, properly dated, shall be forwarded to

1 the agency at the time of filing the objection. In any action
2 contesting a rule or portion of a rule adopted pursuant to
3 this subsection, the burden of proof shall be on the agency to
4 show that the procedures of subsection 1 were impracticable,
5 unnecessary, or contrary to the public interest and that, if a
6 category of rules was involved, the category was very narrowly
7 tailored.

8 Sec. 2. Section 17A.4, subsection 7, Code 2013, is amended
9 to read as follows:

10 7. a. Upon the vote of two-thirds of its members the
11 administrative rules review committee may delay the effective
12 date of a rule or portion of a rule seventy days beyond that
13 permitted in section 17A.5, unless the rule was promulgated
14 under section 17A.5, subsection 2, paragraph "b". ~~This~~
15 ~~provision shall be utilized by the committee only if further~~
16 ~~time is necessary to study and examine the rule. If the~~
17 rule was promulgated under section 17A.5, subsection 2,
18 paragraph "b", the administrative rules review committee,
19 within thirty-five days of the effective date of the rule and
20 upon the vote of two-thirds of its members, may suspend the
21 applicability of the rule or portion of the rule for seventy
22 days.

23 b. Notice of an effective date that was delayed under this
24 provision shall be published in the Iowa administrative code
25 and bulletin.

26 Sec. 3. Section 17A.4, Code 2013, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 9. Upon the vote of two-thirds of its
29 members, the administrative rules review committee, following
30 notice of intended action as provided in subsection 1 and prior
31 to adoption of a rule pursuant to that notice, may suspend
32 further action relating to that notice for seventy days.
33 Notice of a notice of intended action that was suspended under
34 this provision shall be published in the Iowa administrative
35 code and bulletin.

1 Sec. 4. Section 17A.8, subsection 9, Code 2013, is amended
2 to read as follows:

3 9. a. Upon a vote of two-thirds of its members, the
4 administrative rules review committee may delay the effective
5 date of a rule or portion of a rule until the adjournment
6 of the next regular session of the general assembly, unless
7 the rule was promulgated under section 17A.5, subsection 2,
8 paragraph "b". If the rule was promulgated under section
9 17A.5, subsection 2, paragraph "b", the administrative rules
10 review committee, within thirty-five days of the effective date
11 of the rule and upon the vote of two-thirds of its members,
12 may suspend the applicability of the rule or portion of the
13 rule until the adjournment of the next regular session of the
14 general assembly.

15 b. The committee shall refer a rule or portion of a rule
16 whose effective date has been delayed or applicability has
17 been suspended to the speaker of the house of representatives
18 and the president of the senate who shall refer the delayed
19 or suspended rule or portion of the rule to the appropriate
20 standing committees of the general assembly. A standing
21 committee shall review a the rule within twenty-one days
22 after the rule is referred to the committee by the speaker
23 of the house of representatives or the president of the
24 senate and shall take formal committee action by sponsoring
25 a joint resolution to disapprove the rule, by proposing
26 legislation relating to the rule, or by refusing to propose
27 a joint resolution or legislation concerning the rule. The
28 standing committee shall inform the administrative rules review
29 committee of the committee action taken concerning the rule.
30 If the general assembly has not disapproved of the rule by a
31 joint resolution, the rule shall become effective. The speaker
32 of the house of representatives and the president of the senate
33 shall notify the administrative code editor of the final
34 disposition of each rule or portion of a rule whose effective
35 date has been delayed or whose applicability has been suspended

1 pursuant to this subsection. If a the rule is disapproved, ~~it~~
2 the rule shall not ~~become~~ be effective and the agency shall
3 rescind the rule. ~~This section shall not apply to rules made~~
4 ~~effective under section 17A.5, subsection 2, paragraph "b".~~

5 Sec. 5. Section 17A.23, Code 2013, is amended to read as
6 follows:

7 **17A.23 Construction — delegation of authority.**

8 1. Except as expressly provided otherwise by this chapter
9 or by another statute referring to this chapter by name, the
10 rights created and the requirements imposed by this chapter
11 shall be in addition to those created or imposed by every other
12 statute in existence on July 1, 1975, or enacted after that
13 date. If any other statute in existence on July 1, 1975, or
14 enacted after that date diminishes a right conferred upon a
15 person by this chapter or diminishes a requirement imposed upon
16 an agency by this chapter, this chapter shall take precedence
17 unless the other statute expressly provides that it shall take
18 precedence over all or some specified portion of this ~~named~~
19 cited chapter.

20 2. This chapter shall be construed broadly to effectuate
21 its purposes. This chapter shall also be construed to apply
22 to all agencies not expressly exempted by this chapter or by
23 another statute specifically referring to this chapter by ~~name~~
24 citation; and except as to proceedings in process on July 1,
25 1975, this chapter shall be construed to apply to all covered
26 agency proceedings and all agency action not expressly exempted
27 by this chapter or by another statute specifically referring to
28 this chapter by ~~name~~ citation.

29 3. An agency shall have only that authority or discretion
30 delegated to or conferred upon the agency by law and shall not
31 expand or enlarge its authority or discretion beyond the powers
32 delegated to or conferred upon the agency. Unless otherwise
33 specifically provided in statute, a grant of rulemaking
34 authority shall be construed narrowly.

35

EXPLANATION

1 This bill relates to the rulemaking process and agency
2 decision making. The bill concerns the administrative rules
3 review committee (ARRC) relative to its powers concerning the
4 rulemaking process.

5 As it relates to the rulemaking process, the bill provides
6 that a rule can be adopted without notice only if the statute
7 so provides or with the approval of the ARRC. Code section
8 17A.4(3) relates to so-called "emergency" rulemaking. This
9 section is amended to empower the ARRC to object to an
10 emergency adopted rule and suspend its effect by a two-thirds
11 vote. Code section 17A.4(7), concerning the 70-day delay
12 authority of the ARRC, is amended to provide that the ARRC
13 may, upon a two-thirds vote, suspend the applicability of a
14 rule promulgated under Code section 17A.5(2)(b) (so-called
15 emergency rulemaking) for 70 days. The bill provides that
16 action to suspend the applicability of a rule under this new
17 provision must be taken within 35 days of the effective date
18 of the rule. In addition, the bill provides that the ARRC may
19 utilize the 70-day delay authority regardless of the reason
20 for the delay and for a portion of a rule. Under current law,
21 rules promulgated under Code section 17A.5(2)(b) take effect
22 upon filing and are not subject to the 70-day delay authority
23 of the ARRC.

24 Code section 17A.4, new subsection 9, provides that the
25 ARRC, upon a two-thirds vote, may suspend for 70 days further
26 action relating to a notice of intended action filed by an
27 agency. Under current law, the ARRC has no authority relating
28 to a notice of intended action until the adopted rule is filed
29 in final form following this notice.

30 Code section 17A.8(9), concerning the session delay
31 authority of the ARRC, is amended to provide that the ARRC,
32 upon a two-thirds vote, may suspend the applicability of an
33 emergency rule until the adjournment of the next regular
34 session of the general assembly. The bill also provides that
35 action to suspend the applicability of a rule under this new

1 provision must be taken within 35 days of the effective date
2 of the rule. In addition, the bill provides that the ARRC
3 may utilize the session delay authority for a portion of a
4 rule. Under current law, rules promulgated under Code section
5 17A.5(2)(b) take effect upon filing and are not subject to the
6 session delay authority of the ARRC.

7 The bill creates a rule of statutory construction relating
8 to the delegation of rulemaking authority. The bill provides
9 that unless otherwise specifically provided in statute, a grant
10 of rulemaking authority shall be construed narrowly.